

§ 206.350 Purpose and scope.

(a) This subpart is applicable to all geothermal resources produced from Federal geothermal leases issued pursuant to the Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001 *et seq.*). The purpose of this subpart is to establish the value of geothermal production for royalty purposes.

(b) All royalty payments made to MMS are subject to audit and adjustment.

§ 206.351 Definitions.

For purposes of this subpart:

Arm's-length contract means a contract or agreement that has been arrived at in the marketplace between independent, nonaffiliated persons with opposing economic interests regarding that contract. For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with, another person. For purposes of this subpart, based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership:

(1) Ownership in excess of 50 percent constitutes control;

(2) Ownership of 10 through 50 percent creates a rebuttable presumption of control; and

(3) Ownership of less than 10 percent creates a presumption of noncontrol which MMS may rebut if it demonstrates actual or legal control, including the existence of interlocking directorates.

Notwithstanding any other provisions of this subpart, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. The MMS may require the lessee to certify the claimed nature of ownership control. To be considered arm's-length for any production month, a contract must meet the requirements of this definition for the production month as well as when the contract was executed.

Audit means a procedure having the same meaning and effect as that described at 30 CFR part 217 for verifying royalty payment compliance activities of lessees or other authorized persons who pay royalties, rents, or bonuses on Federal geothermal leases.

Byproduct means:

(1) Any mineral or minerals (exclusive of oil, hydrocarbon gas, and helium) which are found in solution or developed in association with geothermal fluids and which have a value of less than 75 per centum of the value of the geothermal energy or are not, because of quantity, quality, or technical difficulties in extraction and production, of sufficient value to warrant extraction and production by themselves, and

(2) Commercially demineralized water.

Byproduct recovery facility means the facility or facilities at which byproducts are placed in marketable condition.

Byproduct transportation allowance means an approved allowance for the lessee's reasonable, actual costs, excluding gathering, incurred for moving byproducts, including commercially demineralized water, to a point of sale or point of delivery off the lease, unit area, or communitized area.

Contract means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

Deduction means a subtraction used in the geothermal netback procedure for determining the value of geothermal resources utilized by the lessee to generate electricity. *Transmission deduction* means a deduction for the lessee's reasonable actual costs incurred to wheel or transmit the electricity from the lessee's powerplant to the purchaser's delivery point. *Generating deduction* means a deduction for the lessee's reasonable, actual costs of generating plant tailgate electricity.

Delivered electricity means the amount of electricity in kilowatthours delivered to the purchaser.

Direct utilization means any process other than electrical generation in which the thermal energy of the geothermal resource is utilized, including, but not limited to, space heating, greenhouse operations, and industrial or agricultural process heat.

Field means the land surface vertically projected over a subsurface geothermal reservoir encompassing at least the outermost boundaries of all